

**PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.**

Nobu Kato  
1902 South Santa Fe Avenue  
Vista, CA 92083

**DECISION OF THE DIRECTOR  
Habitat Loss Permit**

APPLICATION NUMBER: HLP xx-xxx, ER

ASSOCIATED PERMIT(S): TPM 21057; ER 07-02-005

NAME OF APPLICANT: Nobu Kato

DESCRIPTION/LOCATION OF LOSS:

The proposed Habitat Loss Permit will allow removal of 1.48 acres of coastal sage scrub habitat as shown on the attached Habitat Loss Exhibit dated September 2010. The project proposes a Tentative Parcel Map to subdivide 19.39 acres into 5 residential lots. The site is located west of Interstate 15 and Mission road, and north of North River Road in the Community of Bonsall (APN 126-250-31) within the unincorporated portion of San Diego County.

The historical use of the project site included an orchard, and over 85% of the land is currently mapped as agriculture, disturbed or developed. Lands to the west, north, and south are impacted by existing residential development and agricultural uses. Although a large block of undeveloped land and habitat is located to the east, just east of Mission Rd. /SR-76 the project site is not directly connected to this land, as SR 76 bisects the project site from any undeveloped land.

The site and surrounding area supports the following vegetation communities: 1.48 acres of Diegan coastal sage scrub, 1.39 acres of non-native grassland, 0.02 acres of

disturbed/developed land, and 16.51 acres of orchard. Approximately 1.48 acres of coastal sage scrub will be impacted onsite which is subject to NCCP/4(d) findings. The project proposes offsite mitigation of coastal sage scrub at a 1:1 ratio. Surveys for California Gnatcatcher were conducted in May and June of 2007 and it was determined the site is not occupied. No sensitive plant species were observed onsite. Four sensitive wildlife species were noted on site: red-shouldered hawk (*Buteo lineatus*), turkey vulture (*Cathartes aura*), northern harrier (*Circus cyaneus hudsonius*), and white-tailed kite (*Elanus caeruleus*).

Table 1.  
Impacts and Mitigation Table

Habitat Type	Acreage	Impacted Acreage	Proposed Mitigation Ratio	Offsite Mitigation Acreage
Diegan coastal sage scrub	1.48	1.48	1:1	1.48
Non Native grassland	1.39	1.39	0.5:1	0.70
Orchard	16.51	16.51	n/a	0
Urban/developed	0.02	0.02	n/a	0
TOTAL	19.4	19.4		2.18

All impacts associated with the development of the property have been mitigated to a level below significance. The proposed project is in conformance with all standards and guidelines pursuant to the NCCP Process Guidelines.

#### DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by the either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for this additional loss of coastal sage scrub as described above and shown on the attached Habitat Loss Exhibit for a period of one calendar year commencing the day concurrence is given by

both the USFWS and CDFG. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat that was not previously cleared, graded or removed expires.

**This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the “Conditions of Approval” section of this permit have been satisfied.**

CONDITIONS OF APPROVAL:

**The following conditions are being placed in the decision and on the grading plan. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.**

A. Prior to use and reliance on this Habitat Loss Permit, the following conditions shall be met:

1. Obtain approval from the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan that authorizes the clearing and/or grading of the area addressed by this Habitat Loss Permit.

**2 .OFF-SITE MITIGATION: [DPLU, PCC] [MA, GP, IP] [DPLU, FEE X2] [DPR, GPM] Intent:** In order to mitigate for the impacts to coastal sage scrub, which is a sensitive biological resource pursuant to CEQA, off-site mitigation shall be acquired. **Description of Requirement:** The applicant shall purchase habitat credit, or provide for the conservation of 1.48 acres of coastal sage scrub located in the northern valley eco region.

**-AND-**

**3. OFF-SITE MITIGATION: [DPLU, PCC] [MA, GP, IP] [DPLU, FEE X2] [DPR, GPM] Intent:** In order to mitigate for the impacts to non native grassland which is a sensitive biological resource pursuant to CEQA, off-site mitigation shall be acquired. **Description of Requirement:** The applicant shall purchase habitat credit, or provide for the conservation of 0.70 acres of non native grassland located in the northern valley eco region.

a. **Option 1:** If purchasing Mitigation Credit the mitigation bank shall be approved by the California Department of Fish & Game. The following evidence of purchase shall include the following information to be provided by the mitigation bank:

1. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
2. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.

3. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
4. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.

b. **Option 2:** If habitat credit cannot be purchased in a mitigation bank, then the applicant shall provide for the conservation of habitat of the same amount and type of land located in San Diego County as indicated below:

1. The type of habitat and the location of the proposed mitigation, should be pre-approved by [DPLU, PCC] before purchase or entering into any agreement for purchase.
2. A Resource Management Plan (RMP) shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Content Requirements to the satisfaction of the Director of DPLU. If the offsite mitigation is proposed to be owned and/or managed by DPR, the RMP shall also be approved by the Director of DPR.
3. An open space easement over the land shall be dedicated to the County of San Diego or like agency to the satisfaction of the Director of DPLU. The land shall be protected in perpetuity.
4. The final RMP cannot be approved until the following has been completed to the satisfaction of the Director of DPLU: The land shall be purchased, the easements shall be dedicated, a Resource Manager shall be selected, and the RMP funding mechanism shall be in place.
5. In lieu of providing a private habitat manager, the applicant may contract with a federal, state or local government agency with the primary mission of resource management to take fee title and manage the mitigation land. Evidence of satisfaction must include a copy of the contract with the agency, and a written statement from the agency that (1) the land contains the specified acreage and the specified habitat, or like functioning habitat, and (2) the land will be managed by the agency for conservation of natural resources in perpetuity.

**Documentation:** The applicant shall purchase the off-site mitigation credits and provide the evidence to the [DPLU, PCC] for review and approval. If the offsite mitigation is proposed to be owned or managed by DPR, the applicant must provide evidence to the [DPLU PCC] that [DPR, GPM] agrees to this proposal. It is recommended that the applicant submit the mitigation proposal to the [DPLU, PCC], for a pre-approval. If an RMP is going to be submitted in-lieu of purchasing credits, then the RMP shall be prepared and an application for the RMP shall be submitted to the [DPLU, ZONING]. **Timing:** Prior to the approval of the map and prior to the approval of any plan and issuance of any permit, the mitigation shall be completed. **Monitoring:** The [DPLU, PCC] shall review the mitigation purchase for compliance with this condition. Upon request from the applicant [DPLU, PCC] can preapprove the location and type of mitigation only. The credits shall be purchased before the requirement can be completed. If the applicant chooses option #2, then the [DPLU, ZONING] shall accept an application for an

RMP, and [DPLU, PPD] shall review the RMP submittal for compliance with this condition and the RMP Guidelines.

- B. Prior to use and reliance on this permit the following conditions shall be placed on the face of all future grading permits or improvement plans:

1. **“RESOURCE AVOIDANCE: [DPLU, PCC] [DPW, PDCI] DPLU, FEE X2].**

**Intent:** In order to avoid impacts to nesting birds, which is a sensitive biological resource pursuant to CEQA, a Resource Avoidance Area (RAA), shall be implemented on all plans. **Description of Requirement:** There shall be no brushing, clearing and/or grading such that none will be allowed within 300 feet of coastal sage scrub or other shrubs and trees that can be used as habitat during the breeding season of the California Gnatcatcher and raptors. The breeding season is defined as occurring between January 15 and August 31. The Director of Planning and Land Use [DPLU, PCC] may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, provided that no raptors or California Gnatcatcher are present in the vicinity of the brushing, clearing or grading. **Documentation:** The applicant shall provide a letter of agreement with this condition; alternatively, the applicant may submit a written request for waiver of this condition. Although, No Grading shall occur within the RAA until concurrence is received from the County and the Wildlife Agencies. **Timing:** Prior to preconstruction conference and prior to any clearing, grubbing, trenching, grading, or any land disturbances and throughout the duration of the grading and construction, compliance with this condition is mandatory unless the requirement is waived by the County upon receipt of concurrence from the Wildlife Agencies. **Monitoring:** The [DPW, PDCI] shall not allow any grading in the RAA during the specified dates, unless a concurrence from the [DPLU, PCC] is received. The [DPLU, PCC] shall review the concurrence letter.”

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

TO BE PROVIDED

B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will impact 1.48 acres of coastal sage scrub and no pairs of California gnatcatcher (*Polioptia californica*). Approved coastal sage scrub

losses as of September 2010 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP), are presented in the following table:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1164 acres
Net loss due to this project:	1.48 acres
Total cumulative loss:	1165.48 acres
Remaining loss under five percent guideline:	1787.82 acres

Therefore, the habitat loss due to this project does not exceed the five percent guideline.

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The County habitat evaluation model ranks the site as predominantly agriculture, with a small amount of very high habitat along the eastern border. The 1.48 acres of coastal sage scrub on-site is of low to intermediate value as outlined by the flow chart in the NCCP Guidelines. The CSS habitat on the eastern edge of the site is shown as very high value on the County habitat evaluation map. The project will directly impact all of the CSS on-site.

Loss of this habitat will not preclude connectivity between areas of high habitat values. The high value habitat and wildlife corridor is east of the project site across Mission Rd.(SR- 76) along the San Luis Rey River. The lands west of SR- 76 are predominantly residential or agricultural properties. To the north and west of the project site there are existing residential structures on small lots, and to the south there are agriculture lands. Due to the steep topography of the site wildlife movement thru the site from the south would be limited. Ultimately wildlife movement from west to east would occur further south of the site. Therefore, the project site is not considered within nor does it contribute to a wildlife linkage or corridor as a result of the surrounding development and land uses. For these reasons, the habitat loss associated with the project will not preclude connectivity between areas of high habitat values.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

Development of this site would not foreclose on the ability to create a viable preserve in the subarea and subregion, as the CSS on site is not suitable for long-term preservation due to its small size, topography, and surrounding existing development and proposed expansion of SR-76. In addition, the CSS

habitat on-site is not identified for conservation on Attachment B of the Process Guidelines. No California gnatcatchers were found on-site during protocol surveys, and the site contains no sensitive plant species. Four sensitive wildlife species were noted on site: red-shouldered hawk (*Buteo lineatus*), turkey vulture (*Cathartes aura*), northern harrier (*Circus cyaneus hudsonius*), and white-tailed kite (*Elanus caeruleus*). By preserving habitat off-site at a 1:1 ratio in areas known to support sensitive species like the red-shouldered hawk and turkey vulture, development of the site will not have a significant regional impact to these and other sensitive species. Since the acreage of habitat is small and surrounded on three sides by dense residential development, the habitat loss will not preclude or prevent the preparation of the subregional NCCP.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

All of the 1.48 acres of coastal sage scrub habitat on the project site will be impacted by the project. The habitat is considered of "Low to intermediate" value, pursuant to the NCCP Logic Flow Chart. Despite this intermediate value, preservation of on-site habitat would not create a viable preserve. The site is surrounded by existing development on three sides. Avoidance or preservation of the habitats on-site would not maintain the long-term viability of the habitat. The project will be required to purchase no less than 1.48 acres of Diegan coastal sage scrub to mitigate for impacts at a 1:1 ratio. This habitat must be purchased either within a County-approved mitigation bank or a County-approved off-site location. For habitat purchases outside of a formal mitigation bank, a Habitat Management Plan would be required to the satisfaction of the County. The purchase of off-site habitat will provide for the long-term viability of habitat that has connectivity to high value districts. In addition, no clearing or grading will be permitted within 300 feet of these habitat types during the breeding season of the California gnatcatcher. As such, the loss of Diegan coastal sage scrub will be mitigated to the maximum extent practicable for low to intermediate-value habitat in accordance with Section 4.3 the NCCP Process Guidelines.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

A protocol California gnatcatcher survey was performed in May and June of 2007 with negative results. No sensitive plant species were observed or have a high potential to occur on-site. Four sensitive wildlife species, red-shouldered hawk, turkey vulture, northern harrier, and white-tailed kite, were identified soaring overhead, but are unlikely to nest onsite. There will be potential impacts to these sensitive species due to this project, but the site does not contain regionally

important populations nor provide significant habitat for these species. To mitigate for the loss of CSS habitat due to the project, offsite purchase of CSS habitat will be required at a 1:1 ratio. Off-site mitigation is also required for impacts to non-native grasslands at a ratio of 0.5:1. These off-site habitat purchases will preserve habitat with long-term viability that has connectivity to high value districts and potential to support listed species. Through these mitigation measures the proposed residential development of the project site will not appreciably reduce the likelihood of the survival and recovery of listed species.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The project will require grading plans and improvement plans for development of roads, driveways and house pads. The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Game and U.S. Fish and Wildlife Service and approval by the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan is required prior to the clearing of any coastal sage scrub supported on the project site. No state or federal permits are identified as being required at this time. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to "otherwise lawful activities".

#### NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **Yes.**
5. Is the land located in a corridor between higher value districts. **No.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the TPM 2105 project is defined as being "low to intermediate Value."

#### MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings



are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

A.1-3

- Enforcement

Compliance with the following conditions is assured because complaints of non-compliance may be provided by the public to the County which may then investigate the status of compliance and pursue enforcement:

None

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

None

**NOTICE:** The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

**NOTIFICATION TO APPLICANT:** Because your project has an effect on native biological resources, State law requires the payment of a \$1,993 fee to the California Department of Fish and Game for their review of the Mitigated Negative Declaration

(Fish and Game Code §711.4) and a \$50 administrative fee to the County (\$2,043 total). If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable). **The payment must be by certified check or cashier's check payable to the "County of San Diego" and can be submitted to the cashier at the DPLU office or directly to the County Clerk.** The fees (excluding the administrative fee) may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

**NOTICE:** The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

**DEFENSE OF LAWSUITS AND INDEMNITY:** The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers and employees to attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense.

**JUDICIAL REVIEW TIME LIMITATIONS:** The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the

party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on date of decision. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE  
ERIC GIBSON, DIRECTOR

BY:

Richard Grunow, Section Chief  
Project Planning Division

Attachments

Habitat Loss Exhibit dated September 2010

USGS Map

Biological Technical Report, Pacific Southwest Biological Services, July 15, 2010

cc: To be provided at issuance of Habitat Loss Permit